UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

DEUTSCHE POST GLOBAL MAIL
(FORMERLY YELLOWSTONE
INTERNATIONAL MAILING, INC.)
Employer

and

Case 13-RD-2468

CHRISTOPHER COOPER
Petitioner

and

MANUFACTURING, PRODUCTION, and
SERVICE WORKERS UNION, LOCAL 24,
AFL-CIO
Union

DECISION ON REVIEW AND ORDER

On September 28, 2006, the Board[1] granted the Employer's Request for Review of the Regional Director's administrative dismissal of the petition. The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel. Having carefully considered the uncontested facts with respect to the issue on review, we conclude that the Regional Director erred in dismissing the petition.

In 2001, the Union was certified as the representative of a unit of the Employer's production, maintenance, and warehouse employees. The Employer contested the certification, and refused to bargain with the Union. In 2003, the United States Court of Appeals for the Seventh Circuit enforced the Board's Order requiring the Employer to recognize and bargain with the Union. *NLRB v. Deutsche Post Global Mail, Ltd.*, 315 F.3d 813 (7th Cir. 2003). Subsequently, the Employer posted a notice pursuant to the court's and Board's orders.

[1] Members Schaumber and Kirsanow, Member Walsh dissenting.

Thereafter, on February 10, 2004, the Employer and the Union entered into a settlement agreement resolving additional unfair labor practice charges filed by the Union in Cases 13-CA-41029, 13-CA-41172 and 13-CA-41345. By entering into the settlement agreement, the Employer agreed, among other things, not to make certain changes in the bargaining unit employees' terms and conditions of employment without giving notice to the Union and giving the Union an opportunity to bargain about the changes. More specifically, the Employer agreed that it would not unilaterally: a) stop giving merit pay increases to employees; b) offer a voluntary life insurance program to employees; c) make changes to employees' dental insurance provider; or d) change employment conditions by automating the mail sorting operations. The settlement agreement contained three affirmative provisions: a) upon request of the Union, the Employer agreed to rescind the terms of employment pertaining to voluntary life insurance and dental insurance that were offered or changed; b) the Employer agreed to offer reinstatement to certain employees whose positions were eliminated; and c) the Employer agreed to make those employees whole. The settlement agreement did not contain an affirmative provision of any kind requiring the Employer to bargain with the Union. The Employer posted a notice in its facility, reflecting this agreement, from February 18, 2004 through April 18, 2004.

The Petitioner began soliciting signatures to support the decertification petition on April 21, 2004, three days after the notice-posting period ended. The Petitioner filed the petition on May 7, 2004. The Regional Director dismissed the petition, citing to the Board's policies set forth in *City Markets*, 273 NLRB 469 (1984), and *Douglas-Randall, Inc.*, 320 NLRB 431 (1995). The Regional Director elaborated that under *Poole Foundry & Machine Co.*, 95 NLRB 34 (1951), enfd., 192 F.2d 740 (4th Cir. 1951), cert. denied 342 U.S. 954 (1952), a reasonable period of time to bargain had not passed since approval of the settlement agreement. The Regional Director found that only two months had elapsed between the signing of the settlement agreement and the Petitioner's solicitation of signatures, and the parties had met only once to bargain during this time period. The Regional Director found that an adequate bargaining period had not passed at the time the petition was filed, especially in light of the fact that the parties were negotiating for an initial contract, and thus dismissed the petition.

On the facts of this case, we do not agree that *Poole Foundry* requires dismissal of the petition. In *Poole Foundry*, the Board found that when an employer enters into a settlement agreement "containing a bargaining provision" a question concerning representation cannot be raised until a reasonable time to bargain has passed. 95 NLRB at 36. In such circumstances, the employer, having made a commitment in the settlement agreement to bargain, is obligated to honor that commitment for a reasonable time after its execution. However, where the settlement agreement does not contain an affirmative bargaining obligation, the principles of *Poole Foundry* do not apply, and the issue of whether a reasonable time to bargain has passed does not arise. Rather, the only issue is whether the employer has otherwise met its obligations under the settlement.

Here, the settlement agreement that the parties entered into requires only that the Employer refrain from taking certain actions without notifying the Union and providing it with an opportunity to bargain, that it rescind certain terms of employment upon request of the Union, and that it offer to reinstate employees with backpay. The settlement agreement does not, however, require the Employer to affirmatively bargain with the Union. Absent such a requirement, dismissal pursuant to *Poole Foundry* is not appropriate.

Accordingly, we remand this case to the Regional Director to take appropriate action consistent with this Decision on Review and Order.

PETER C. SCHAUMBER, MEMBER

PETER N. KIRSANOW, MEMBER

DENNIS P. WALSH, MEMBER

Dated, Washington, D.C., November 13, 2006